IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/06/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO. 919 of 1996 and CRIMINAL APPEAL NO. 65 of 1997
and
CRL.R.C.No.549 of 1998

Somasundaram .. Appellant in C.A.919/96

1. Muthu
2. Pushpa .. Appellants in C.A.65/97

-Vs-

State by
Inspector of Police
G1 Police Station
Madras .. Respondent in both appeals

CRL.R.C.No.549 of 1998:

Sakunthala .. Petitioner

vs

1. Somasundaram
2. Muthu
3. Pushpa
4. State by
Assistant Commissioner of
Police (L & O)
Kilpauk Circle
Chennai 600 007. .. Respondents

Both the criminal appeals are preferred under S.374(2) of Code of Criminal Procedure against the judgment of conviction and sentence passed by the II Additional Sessions Judge, Madras in S.C.No.266 of 1996 dated 11.12.1996.
The criminal revision case is preferred under S.397 r/w 401 of Code of Criminal Procedure against the judgment acquitting the respondents from an alleged offence under S.304-B of I.P.C. and imposing fine of Rs.5,000/- alone for each of the respondents 2 and 3 though they were found guilty of offence under S.498-A of IPC passed by the II Additional Sessions Judge, Madras in S.C.No.266/96 dated 11.12.1996.

!For Appellants in
C.A.Nos.919/96 &
65/97 and R1 to R3
in CRL.R.C.549/98 : Mr.V.Krishnamurthy

For Petitioner in
Crl.R.C.549/98 : Mr.S.Sathiachandran

^For Respondent in
both appeals and
R4 in Crl.R.c.
549/98 : Mr.I.Subramanian,
Public Prosecutor

:COMMON JUDGMENT

The appellants in both these appeals who were ranked as A-1 to A-3 respectively have brought forth the appeals challenging the judgment of the learned II Additional Sessions Judge, Madras, made in S.C.No.26 6 of 1996 finding them guilty under S.498-A of I.P.C. and sentencing A-1 to undergo R.I. for three years and to pay a fine of Rs.2,500/- and in default to undergo S.I. for 6 months and sentencing A-2 and A-3 to pay a fine of Rs.5,000/- each and in default to undergo S.I. for nine months, while the criminal revision case has been brought forth by P.W.1 complainant against the said judgment of the Court below acquitting A-1 to A-3 under S.304-B IPC and imposing only a fine of Rs.5,000/- on A-2 and A-3 for the offence under S.498-A IPC.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

(a) The first accused is the son of the accused No.2 and 3. The deceased Subhashini was the daughter of P.W.1 Sakunthala and P.W.2 Narayanasamy. The arranged marriage of A-1 and Subhashini took place on 1 8.10.1989 as per the customary practice, and they were carrying on the matrimonial life in Door No.22, Valluvan Street, Purasawakkam, Madras. At the time of marriage 10 sovereigns of gold jewels and household articles were given to her. The accused demanded Rs.6,000/- and silver lamp at the time of the marriage. The very next day to the marriage, Subhashini came to her parents and reported that her husband A-1 did not like her because she was blackish in colour. After a short interval, she came and reported that her husband was having illicit intimacy with his elder brother's wife Chandrika. P.W.1 pacified her daughter and sent her back. The accused began to treat her cruelly, since she came to know about the illicit intimacy of the first accused. Again, they unlawfully made a demand of Rs.6,000/- for purchase of machinery. When the same was informed by the said Subhashini, P.Ws.1 and 2 informed that they could not meet the demand. Subhashini became pregnant and came to her mother's house, and she was staying over there and gave birth to a male child on 27.7.1991. No one of the accused came to see the child. After five months, only on the assurance that they would not harass, Subhashini was sent to her matrimonial home. Despite the assurance, they continued to exert

cruel treatment on Subhashini. On 18.3.1995 A-1 poured hot milk on the body of Subhashini. Subhashini came to her mother's house and reported the same. The parents pacified her and sent her back to the matrimonial home. The accused developed aversion against the deceased. The first accused expressed his desire to to for a bigamous marriage, and he told Subhashini that she should agree to that course, and after the said marriage, she should continue to live jointly along with all. Subhashini who could not tolerate the cruel treatment and the pressure exerted, fell down from the running electric train on 11.4.95 and committed suicide. The Railway Police Egmore registered a case in Crime No.346/95 under S.174 of Cr.P.C. The matter was referred to P.W.7 Sethu Ramakrishnan, Tahsildar, Tondiarpet, who made an enquiry as to the cause of death and gave Ex.P7 inquest report. The F.I.R. given to the Railway Police referred to above was marked as Ex.P9. On receipt of Ex.P4 requisition, P.W.6 Dr.Manohar conducted autopsy on the dead body of Subhashini on 11.4.95 at 2.30 P.M. He found as many as 10 injuries on the body of the deceased. The Doctor issued Ex.P6 postmortem certificate and opined that the deceased died of shock and haemorrhage due to multiple injuries.

(b) On 5.2.1996, P.W.1 gave a report to P.W.9 Inspector of Veperry Police Station, on the basis of which a case was registered in Crime No.329 of 1996 under Ss 498 and 306 of I.P.C. P.W.9 prepared Ex.P8 express F.I.R. and sent the same to the higher authorities. P.W.10 Kasi Pandian, Assistant Commissioner, Kilpauk Range took up the investigation and examined the witnesses and recorded their statements. He enquired P.W.7 Tahsildar and Doctors and recorded their statements. After completing the investigation, he filed the charge sheet.

3. In order to prove the charges levelled against the appellants/ accused, the prosecution examined 10 witnesses and marked 9 exhibits. No M.Os. were marked. When the accused were questioned about the incriminating circumstances in the evidence under S.313 of Cr.P.C., they flatly denied the same as false. 2 defence witnesses were examined and two documents were marked. The trial Court after considering the rival submissions and scrutiny of the available materials found that the facts and circumstances do not warrant for a conviction under S.3 04(b) of IPC, but the appellants/accused were liable to be convicted under S.498-A of IPC and awarded punishment as above. Hence, both these appeals have come. Aggrieved over the acquittal of the accused under S.304(b) IPC and the imposition of fine alone on A-2 and A-3, P.W.1 has brought forth the revision.

4. The learned Counsel for the appellants, the learned Counsel for the revision petitioner and the learned Government Advocate (Criminal Side) were heard.

5. Admittedly, the marriage of the first accused with the deceased Subhashini took place on 18.10.1989 as per the customary practice, and she was also given 10 sovereigns of gold and household articles, and they were carrying on the matrimonial life. It is not in dispute that the second and third accused were also living together. According to the prosecution, in between 18.10.1989 and 9.4.1995, there were number of occasions by which demands were made for purchase of machinery, and thereby the accused were exerting cruelty. The lower Court in extenso has considered the entire aspect of the matter and has found that there was nothing to show that there were any harassment or cruelty for getting any movable or immovable properties, as found in the definition of cruelty. But, the lower Court has found that there

were occasions where cruelty was exerted, and the same was the sole reason for the said Subhashini committing suicide on the particular date. It is not in dispute that they have got a male child, and only for a some time she was living in her mother's house, but at the relevant period, she was living with her husband/A-1 and other accused. It is not the case of the defence that she was suffering from insanity or mental retardness. Hence, the husband/A-1 was to answer the circumstances, which led the deceased to commit suicide. 6. On the day of committing suicide, a case was registered under S.174 of Cr.P.C., and the matter was entrusted to P.W.7 Tahsildar, who made a thorough enquiry and filed his report under Ex.P7, wherein he has categorically found out that the said Subhashini committed suicide not due to any dowry harassment, but there were circumstances to indicate that she committed suicide because of the cruel treatment meted to her. P.Ws.1 and 2 and P.W.5, an independent witness all have categorically spoken to the effect that cruelty was meted to her. On one occasion, A-1 husband poured hot milk on his wife Subhashini. P.Ws.1 and 2 would state that there was occasion for Subhashini to stay in her mother's house, as her husband A-1 had illicit intimacy with his elder brother' s wife Chandrika. Apart from that, there were occasions, in which the husband told her that he has desire to bigamous marriage, and she must be amenable for this, and after the marriage, she should live along with all jointly. This action of cruel treatment by A-1 could not be tolerated by the deceased, and hence, there was reason for the lady committing suicide. Under such circumstances, without any hesitation, the Court has to hold that it was the cruel treatment meted out by A-1, and because of that she has committed suicide on the particular day. Under the definition of cruelty, the cruel treatment need not be dowry cruelty, but also mental or physical cruelty. In the instant case, such cruel treatment has been meted out by A.1. Under such circumstances, the lower court was perfectly in finding that cruel treatment was exerted by the accused. This court is unable to see any material whatsoever to implicate A2 and A3 stating that they were living with the deceased during the relevant period.

7. Arguing for the appellant, the learned counsel would submit that here is a case where on the date of death a case was registered by the Railway Police in crime No.346/95 and the investigation was taken up and the matter was entrusted to P.W.7 Tahsildar who made a thorough enquiry and has also given a report; that P.W.7 has given a report after a lapse of 5 or 6 months; that even after a period of four months, a complaint was given by P.W.1 and the present case was registered by P.W.10 in Crime No.329/96; that the investigation was entrusted to P.W.11, Inspector, who took up the investigation and again fresh investigation was carried on on the basis of the complaint and a charge sheet has been laid. Relying upon a decision of the Supreme Court reported in 2001(5) Supreme 131 (T.T.ANTONY ETC. VS. STATE OF KERALA & ORS., ETC), the learned counsel would submit that the investigation was proceeded on the second F.I.R. and the first F.I.R. has not been proceeded with for the same occurrence and under such circumstances, this defect would go to the root of the matter, and hence, the entire trial is vitiated and he should have ended in acquittal and therefore, the accused should be acquitted of the charges against them.
8. In answering to the above contentions put forth by the appellants' side, the learned Public Prosecutor would submit that it is true that on

information, a case was registered by the Railway police under Section 174 Cr.P.C. as to the death caused to the concerned lady; that it has nothing to do with the subsequent information given as to the dowry harassment, etc. and apart from that once original information was registered and the matter was under investigation, the information given by P.W.1 on the basis of which the present case was registered cannot be construed as second F.I.R., but it was only on the basis of the first information, the case was investigated, and hence, the contention of the appellants' side has got to be rejected. Insofar as this contention is concerned, the Court is unable to agree with the appellants' side. Insofar as the First Information Report what was given to the Railway Police is concerned, a case was registered under Section 174 Cr.P.C. A perusal of Ex.P.9 would indicate that it was only an information as to the death caused to the concerned lady, but it has nothing to do with the crime. It is also pertinent to note the matter was referred to P.W.7 Sethu Ramakrishnan, Tahsildar, Tondiarpet, who made an enquiry as to the cause of death and gave a report. After a few months, on the basis of an information given by P.W.1, the present case was registered and investigation has been proceeded with. The contention of the learned counsel for the appellants that prejudice has been caused, since the earlier document has not been brought forth before the Court cannot be countenanced for the simple reason that originally a case was registered under Section 174 Cr.P.C. and an enquiry was conducted by the Tahsildar and the enquiry report along with F.I.R. had been produced before the Court and not only the Tahsildar has been examined, but he was cross examined about all the aspects of the matter. Hence, insofar as the present F.I.R. is concerned, the Court is unable to hold that the said F.I.R. is the second F.I.R. as alleged by the learned counsel for the appellants. Under the stated circumstances, the decision relied on by the learned counsel for the appellants as stated above is not applicable to the present facts of the case, since the investigation was proceeded with on the basis of the F.I.R. in question and the same cannot be called as second F.I.R., and hence, the contention of the appellants' side has got to be rejected.

9. From all the discussions above, the Court is unable to notice any incriminating circumstances to implicate the second and third accused in Criminal Appeal No.65 of 1997 for the offence.

a) In the result, C.A.No.65 of 1997 filed by the second and third accused is allowed. The appellants/accused 2 and 3 are acquitted of all the charges levelled against them. Bail bonds, if any, executed by the appellants/accused 2 and 3 shall stand cancelled.

b) Insofar as C.A.No.919 of 1996 filed by the first accused is concerned, the conviction against the accused under Section 498-A I.P.C. is confirmed. Coming to the question of sentence imposed by the lower court, the lower court has awarded three years R.I. Taking into consideration the facts and circumstances of the case, the Court is of the view that it would be suffice to reduce the sentence to 1-1/2 years, which would meet ends of justice. Accordingly, the sentence imposed by the lower court is reduced to 1-1/2 years. The Sessions Court shall take steps to commit the appellant/first accused to prison, if he is on bail, to undergo the remaining period of sentence. With the above modification, C.A.No.919/96 is dismissed.

c) Considering all the facts and circumstances of the case, the court is of the view that there is no merit in the criminal revision filed by the

petitioner and the same is dismissed.

Index : Yes
Internet : Yes

To

1. The II Metropolitan Magistrate, Egmore, Madras
2. The II Metropolitan Magistrate, Egmore, Madras
through the Chief Metropolitan Magistrate, Egmore,Madras
3. The II Additional Sessions Judge, Madras
4. The II Additional Sessions Judge, Madras
through the Sessions Judge, Madras
5. The Superintendent, Central Prison, Madras
6. The Public Prosecutor, High Court, Madras
7. The Inspector of Police, G1 Police Station, Madras

nsv/vvk